

# February 24, 2006

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**  
**2006 Opinion No. 18**

**CITY OF MC CALL, an Idaho municipal corporation,**

**Plaintiff-Appellant-Cross Respondent,**

**V.**

**J. P. SEUBERT and CHERIE SEUBERT,  
husband and wife,**

**Defendants-Respondents-Cross  
Appellants,**

Docket No. 31191

**and**

**CLEARWATER CONCRETE, INC.,  
VALLEY PAVING & ASPHALT, INC., and  
SEUBERT EXCAVATORS, INC.,**

### **Intervenors-Respondents-Cross Appellants.**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Valley County. Hon. George D. Carey, District Judge.

The decision of the trial court awarding damages in a condemnation action is affirmed.

William A. McCurdy, Boise, for appellant.

Millemann Pittenger McMahan & Pemberton, LLP, McCall, for respondents. Steven J. Millemann argued.

In a unanimous decision, the Idaho Supreme Court affirmed the district court's decision in an eminent domain proceeding awarding damages to property owner Cherie Seubert and to

Clearwater Concrete, Inc. and Valley Paving & Asphalt, Inc., two family-run businesses located on the condemned property.

Seubert owns an approximately fifty-acre parcel of land in the City of McCall, which contains sub-surface gravel and sand mineral deposits. Since the early 1990's, Clearwater and Valley have operated a concrete and asphalt plant on the Seubert property. In March 2003, the Idaho Transportation Department and the City brought an action against Seubert to condemn a 3.82-acre strip through the middle of her property for purposes of building a roadway. The condemned strip of land ran directly through Clearwater and Valley's business operations.

The parties were unable to agree on a reasonable amount of just compensation for the taking of the property and, therefore, the matter went to a jury. The jury awarded taking and severance damages to Seubert of approximately \$550,000, and business damages to Clearwater and Valley totaling nearly \$485,000. The City appealed the awards, raising questions as to what compensation businesses are entitled to when the underlying property the businesses are operating on is condemned in an eminent domain proceeding.

The Supreme Court held that, by statute, a business is entitled to claim damages when it has been operating on the property for over five years. To claim damages, the business itself must also be either owned by the party whose land is being condemned or be located on land owned by the condemnee that immediately adjoins the condemned piece of property. As part of the business damage award, the Court found it was proper for the jury to award relocation costs. In this case, these costs included moving the business operations to other portions of the Seubert property and the expense of widening the City's new roadway to include additional lanes so that trucks used for the asphalt and concrete plants could access the property safely.

Finding the above, the Court unanimously affirmed the order of the district judge awarding damages to the property owner and to the two family-run businesses located on the condemned land.